IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1638 OF 2003
WITH
CRIMINAL APPLICATION NO.1639 OF 2003
WITH
CRIMINAL APPLICATION NO.1640 OF 2003

B.Chandra,
Dy.Registrar of Companies .. Applicant
Versus
M/s.Hasya Trading & Investment Co.Pvt.Ltd. & Ors. .. Respondents

Mr.H.V.Mehta with Mr.J.C.Satpute for applicant
Mr.Rohit Kapadia, Senior Advocate i/b.Dhru & Co. for applicant No.1
Ms.M.M.Deshmukh, A.P.P. for State

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th September 2006.

P.C.

. Rule. By consent Rule made returnable forthwith. Heard learned Counsel for both sides.

2. These applications are by the Dy.Registrar of Companies and directed against the orders passed by the learned Magistrate on the applications preferred for condonation of delay in filing the complaints filed before him alleging commission of offences under the Companies Act, 1956.

3. Applications invoke this Court’s inherent jurisdiction as, in the submission of applicants, the complaint which was filed, was no doubt time barred but there are enough powers conferred by the Cr.P.C. 1973 which enable condoning delays in the interest of justice. The Dy.Registrar of Companies, who is original complainant had along with complaints, filed applications requesting learned Magistrate to condone the delay in filing of the complaints.

4. In para 2 of the application seeking condonation of delay, it is urged that the office

of the Registrar of Companies, State of Maharashtra, has about 1 lakh companies registered with it out of which 60,000/- companies are working. In view of the several functions assigned to the Registry under the Companies Act, it was not possible to take prompt action in filing the complaints. The offence committed and the default being noticed, as a matter of practice, a show cause notice is addressed to the company in question and an opportunity is given to the company to make good the default. In such cases, show cause notices have been despatched. They are received by the companies concerned. Thereafter, replies have been forwarded, which took time for scrutiny and examination and, subsequently it was decided to file a complaint.

5. All such applications were placed before the Magistrate concerned and the learned Magistrate has passed the following order:-

". Heard Company Prosecutor. Perused applications for condonation of delay. The application does not explain day to day delay. It is settled law that applicant has to explain the delay day to day. In the present case day to day delay is not explained and also the applicant has not given good ground to condoning delay. The delay is of period from 1 to 6 years. It apparently, appears that the Registrar of Companies want to complete quota by filing these cases. This Court disclosed its displeasure on attitude of the Registrar of Companies. Hence order:-

ORDER

". All the cases i.e. C.C.No.80/Misc/2001 to

94/Misc/2001 are dismissed."

6. In the cryptic order that he has passed, the emphasis is on the fact that the day to day delay has not been explained. Similarly, the learned Magistrate has proceeded to observe that the Registrar of Companies wants to complete a quota of filing of such cases/complaints and it is on account of the same and expressing displeasure that he proceeded to dismiss the application for condonation of delay in each complaint.

7. Mr.Satpute, learned Counsel appearing for original complainant -ROC submits that this is a fit case for exercise of inherent jurisdiction under section 482 Cr.P.C. He submits that the learned Magistrate overlooked the provisions of the Cr.P.C. which empowered him to condone the delay in the interest of justice in appropriate cases. Inviting my attention to sections 465 to

473 of Cr.P.C. so also the judgement of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Anr. Vs.Mst.Katiji and Ors., reported in A.I.R. 1987 S.C. 1353, Mr.Satpute submits that the learned Magistrate's order is ex facie erroneous inasmuch as there is no requirement to explain each day's delay. Further the learned Magistrate unnecessarily observed that the Registrar of Companies wants to complete some quota. He submits that such comments were uncalled for, inasmuch as, ROC is only performing statutory duty and on account of genuine and bonafide reasons, delay has occurred.

8. Mr.Kapadia, learned Senior Counsel appearing for the accused company in all these applications submits that this is not a fit case for exercise of inherent jurisdiction by this Court. He submits that in exercise of such jurisdiction, this Court does not act as an appellate court and it is not permissible for

this Court to substitute its view with that of the learned Magistrate. More so, when according to him, application does not disclose any reason for condoning the delay. He submits that pressure of work is no ground to seek condonation of delay because this is a common feature in all Department of Government. Further, a requirement of obtaining consent, if any, ought not be confused with a requirement of obtaining prior sanction. There is no question of any sanction or approval of any authority in such cases. For all these reasons, learned Magistrate was right in refusing to condone the delay which is enormous and unexplained. In such circumstances and when the delay is about one to six years these applications deserve to be dismissed.

9. With the assistance of Mr.Satpute and Mr.Kapadia, I have perused the applications and the annexures thereto. Applications for condoning the delay contain specific reasons and

grounds. Paras 2 and 3 of the said application read thus:-

> "2. That the complaint for the offence stated in the accompanying complaint could not be filed within the period of limitation as prescribed under section 468 read with Section 469 of the Criminal Procedure Code, 1973 for the reason that there is heavy pressure of work as more than 1,00,000 companies are registered with the applicant's office out of which about 60,000 companies are working. In view of the several statutory functions under the various provisions of the Companies Act, 1956 to be carried out by the applicant in his capacity as the Department of Company Affairs to take prompt action for the offence committed by the Companies under

his jurisdiction within the period of limitation as provided under Section 468 read with section 469 of the Criminal Procedure Code, 1973.

3. Apart from the above before launching prosecution, show cause notices have to be issued to the company and its officers/directors on 4/6/98 to give them an opportunity to make good the default. Awaiting company's reply/comments and examining these replies and verification thereof with reference to the records maintained in this office caused delay in filing of the present complaint.

4. That in terms of section 468 read with section 469 of the Criminal Procedure Code, 1973, the complaint was required to be filed on or before 5/5/1999. Therefore, this application

> under section 473 is filed before the Hon'ble Court with the humble request for condonation of delay in filing the said complaint."

10. In my view, the learned Magistrate was in clear error in dismissing the applicantions with the observations as above. The requirement of explaining every day's delay is not a matter of rule as is the view of the learned Magistrate. In several cases, including the one arising under Cr.P.C. the Supreme Court has observed that the powers conferred by sections 473 and preceding provisions have to be exercised in the interest of justice. In the case of State of Himachal Pradesh Vs. Tara Dutt and Anr., reported in A.I.R. 2000 S.C. 297, the Supreme Court has observed thus:-

> "7. Section 473 confers power on the Court taking cognisance after the expiry

of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously, therefore, in respect of the offences for which a period of limitation has been provided in Section 468, the power has been conferred on the Court taking cognisance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognisance finds that it would be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognised principles. This being a discretion conferred on the Court taking cognisance, wherever the Court exercises this discretion, the same must be by a

> speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior court to come to the conclusion that the court must be deemed to have taken cognisance by condoning the delay whenever the cognizance was barred and yet the Court took cognisance and proceeded with the trial of the offence."

11. Further, assuming that there is some requirement which contemplates explanation for every day's delay, even then, the learned Judge seems to be unaware of the provisions contained in Section 473 of Cr.P.C. which read thus:-

> "473:- Notwithstanding anything

> contained in the foregoing provisions of the Chapter, any court may make cognisance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice."

12. A plain reading of this provision would indicate that notwithstanding anything contained in the foregoing provisions of this chapter, that means the Chapters where Cr.P.C. provides for limitation for taking cognisance of certain offences (Chapter 36) any Court may, take cognisance of an offence after expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been explained or it is necessary to do so in the interest of justice.

13. In my view, in the cryptic order that is passed by the learned Magistrate, there is absolutely no reference to as to whether the explanation is such as would not necessitate condoning the delay or that it is not in the interest of justice to condone the same. Learned Magistrate seems to have been influenced merely by the fact that the applicant has failed to explain the day to day delay. Merely because the delay is of a period of one to six years, that does not make it incapable of being condoned. Further, the comments and observations that the ROC has to complete some quota were totally unwarranted and uncalled for, as it was nobody's case that the Registrar files such complaints because there is a specific quota assigned to him.

14. In my view, therefore, it would not be proper to uphold this approach of the learned

Counsel. For the reasons assigned by me hereinabove, this is a fit case for exercise of inherent jurisdiction of this Court, which is conferred to secure the ends of justice. In the facts and circumstances, the orders passed by the learned Magistrate on each of these applications, deserve to be quashed and set aside. Rule, is therefore, made absolute in terms of prayer clause (a) to the extent that the orders dated 5th July 2006 would stand quashed and set aside.

15. Applications for condonation of delay filed in each of these complaints to stand restored to the file of learned Magistrate for being disposed of on merits and in accordance with law, after hearing both sides. All contentions in that behalf are expressly kept open. The learned Magistrate to decide them uninfluenced by any observations in the earlier order. He shall endeavour to decide them expeditiously and in any event within a period of

three months from the date of receipt of a copy of this order.

(S.C.Dharmadhikari, J)